

STATE OF MICHIGAN
COURT OF APPEALS

SYBIL JAQUES,

Plaintiff-Appellant/Cross-Appellee,

v

HENRY BASKIN,

Defendant-Appellee/Cross-
Appellant,

and

THE BASKIN LAW FIRM, P.C., f/k/a HENRY
BASKIN, P.C.,

Defendant-Appellee.

UNPUBLISHED

January 9, 2007

No. 270715

Wayne Circuit Court

LC No. 04-436600-CK

Before: Sawyer, P.J., and Bandstra and Murray, JJ.

MURRAY, J. (*concurring*).

I concur in the lead opinion's affirmance of the trial court's order granting defendants' motion for summary disposition. I write separately to address an issue touched upon by plaintiff and defendants in their appellate briefs, but which is only tangentially relevant to the dispositive issue on appeal.

Both parties cite to *Olson v Olson*, 256 Mich App 619; 671 NW2d 64 (2003), for the proposition that this Court approved of a family law attorney's practice of not preparing contemporaneous billings.¹ In my view, this is a too simplistic reading of *Olson*. In that case, we reviewed the trial court's award of attorney and expert fees, which were awarded after the trial court held a three day evidentiary hearing on the issues. *Olson, supra* at 635. "Detailed testimony" was presented on both issues, including the fact that the attorney for Mrs. Olson had not prepared contemporaneous billing records. *Id.* at 636-637.

¹ Apparently Mr. Baskin, who was the attorney whose fee was in dispute in *Olson*, also did not have any contemporaneous billing records prepared in this case.

In the course of the opinion, we did not “approve” the practice of not preparing contemporaneous billing records. Instead, we merely held, citing *Howard v Canteen Corp*, 192 Mich App 427, 437-438; 481 NW2d 718 (1991), overruled on other grounds by *Rafferty v Markovitz*, 461 Mich 265; 602 NW2d 367 (1999), that contemporaneous billing records were not required *as a matter of law*, but their absence could be considered by the trial court in evaluating the reasonableness of the fees. *Id.* Because we were required to review the attorney fee issue for an abuse of discretion, *id.* at 634, we upheld the fact intensive decision made by the trial court. In my view, however, had the trial court denied fees because of the absence of contemporaneous billing records, that decision would likely have also been upheld on appeal.

In other words, although in *Olson* we did not hold as a matter of law that contemporaneous records are required, we did not expressly approve of their absence. We simply held that the trial court did not abuse its discretion in awarding fees, even in the absence of such contemporaneous and detailed billings, because that is only one factor among many to consider in determining the reasonableness of any attorney fees in a divorce case. I believe that is the limited holding from *Olson*, and therefore counsel need be aware that a trial court could just as likely rule against a request for attorney fees in light of a failure to have contemporaneous billing records, a decision that would be reviewed for an abuse of discretion.

/s/ Christopher M. Murray